

No. 15-5060 consolidated with 15-5041, 15-5043, 15-5061

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

HUMANE SOCIETY OF THE
UNITED STATES, et al.,

Plaintiffs-Appellees,

v.

SALLY JEWELL,
SECRETARY OF THE
INTERIOR, et al.,

Defendants-Appellees,

STATE OF WISCONSIN;
WISCONSIN DEPARTMENT
OF NATURAL RESOURCES,

Intervenors for Defendant - Appellants,

SAFARI CLUB
INTERNATIONAL, et al.,

Intervenors for Defendant - Appellees,

On Appeal from the U.S. District Court for the District of Columbia
No. 1:13-cv-00186-BAH (Hon. Beryl A. Howell)

STATE OF WISCONSIN AND WISCONSIN DEPARTMENT OF
NATURAL RESOURCES' STATEMENT OF ISSUES TO BE RAISED

Defendant-Intervenor-Appellants State of Wisconsin and Wisconsin Department of Natural Resources (the “Wisconsin State Appellants”) submit the following non-binding statement of issues in accordance with the Order dated March 4, 2015. This case involves a challenge to a rule issued by the United States Fish and Wildlife Service (“FWS”), which removed Endangered Species Act¹ (“ESA”) protection for gray wolves in the Western Great Lakes Distinct Population Segment (the “Western Great Lakes DPS”). 76 Fed. Reg. 81,666 (Dec. 28, 2011) (the “Final Rule”). On December 19, 2014, the District Court vacated the Final Rule, which had the effect of relisting the gray wolves in the Western Great Lakes DPS under the ESA.

At this time, the Wisconsin State Appellants intend to present the following issues in this consolidated appeal:

(1) Given the highly deferential standards of review under the Administrative Procedure Act² and *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*³, did the District Court err in finding that the Final Rule, based on the FWS’s interpretation of the ESA, was arbitrary and capricious and in violation of the ESA?

¹ As amended, 16 U.S.C. §§ 1531 *et seq.*

² 5 U.S.C. § 706.

³ 467 U.S. 837 (1984).

(2) Did the District Court err in finding that the FWS's decision to delist the Western Great Lakes DPS was contrary to the evidence before the agency?

(3) In light of the foregoing, did the District Court err in vacating the Final Rule?

Dated this 3rd day of April, 2015.

Respectfully submitted,

BRAD D. SCHIMEL
Attorney General

s/ Jennifer L. Vandermeuse
JENNIFER L. VANDERMEUSE
Assistant Attorney General
State Bar #1070979

THOMAS J. DAWSON
Assistant Attorney General
State Bar #1016134

Attorneys for the Wisconsin State
Appellants

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-7741
(608) 267-2223 (Fax)
vandermeusejl@doj.state.wi.us